BRISTOL RESOURCE RECOVERY FACILITY OPERATING COMMITTEE

TUNXIS RECYCLING OPERATING COMMITTEE

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Testimony of the
Bristol Resource Recovery Facility Operating Committee (BRRFOC)
and the Tunxis Recycling Operating Committee (TROC)
to the
Legislative Program and Review Investigations Committee
Municipal Solid Waste Management Services in Connecticut
Thursday, October 8, 2009 – Room 2D – Legislative Office Building

Good Afternoon. My name is Jonathan Bilmes. I am the Executive Director of the Bristol Resource Recovery Facility Operating Committee and the Tunxis Recycling Operating Committee. I have several brief comments regarding the Program Review Staff Briefing on Municipal Solid Waste Management Services in Connecticut.

First, I want to acknowledge the hard work of the Program Review Staff. I believe the Staff Briefing paper, for the most part, correctly summarizes the status of municipal solid waste management in Connecticut and identifies many of the key issues that need to be addressed. We look forward to working with the Legislature on specific proposals during the next phase of the study.

BRRFOC/TROC submitted detailed comments on the 2006 DEP Proposed Amendment to the State of Connecticut Solid Waste Management Plan and comments at the September 23, 2008 Program Review Hearing on Resources Recovery Facility Ownership. Many of these comments addressed opportunities and issues surrounding the state's solid waste system and are still valid today. Therefore, in addition to the comments below on this Staff Briefing paper, we are incorporating as appendices our comments on the 2006 DEP Plan and our comments submitted last year to Program Review.

With respect to the staff briefing paper on Municipal Solid Waste Management Services in Connecticut, there are several corrections/clarifications we would like to submit to the Program Review Committee:

Overview

The report should use current data throughout. If there is not more current data than 2003 available, that in and of itself raises an important question/concern that should be addressed, I.e., why is the data gathering system so far behind and what can be done to improve? Given the recent economic downturn and its significant impact on the quantities of solid waste and recyclables being generated as well as related items such as changing energy markets and commodities markets, the use of current data is very important and may impact the conclusions of the report.

Solid Waste Management Participants, Planning and System Components

The report should consistently state that there are 14 municipalities in the BRRFOC and 13 in the TROC. Page 15, for example, indicates there are 16 municipalities in the BRRFOC. This is incorrect.

The report properly indicates that stakeholders are frustrated by the lack of funding and support for recycling/diversion initiatives. Our region has supported many legislative initiatives the past few years without much success. (page 18)

Solid Waste Collection and Transfer Stations

The report should consistently discuss the ownership status of the Bristol waste to energy facility. For example, the description on page 31 is different than page 62. The description on page 62 is correct.

The fact that program review staff and DEP have been unable to compile comprehensive and accurate information regarding haulers in the state is illustrative of the fact that a critical part of the state's solid waste management system is subject to little oversight and/or regulation. (page 35-36)

Transfer stations are a critical component of the solid waste management system. The information on transfer stations beginning on page 36 of the report is valuable and was noticeably absent from the DEP's 2006 Plan, a shortcoming we discussed in our comments on the DEP Plan.

Recycling

The section on recycling should include a discussion of the waste characterization study currently being performed by a DEP consultant. Preliminary results (from the first round this past winter) are available on DEP's web site. Second round testing/sorting is taking place this October. DEP hopes to use the data to help determine what materials to target to achieve the state's diversion goals.

The Staff Briefing does not discuss the fact that the facility ownership/control issue is important vis a vis reaching new state goals on recycling. This was discussed in last year's Staff Briefing on the public-private ownership issue and should be incorporated into this report.

The report should mention the state's new electronic waste recycling law/proposed regulations and indicate whether this model should be used for other problem waste materials. If so, what would the impact be on the waste stream/diversion rate if applied to other materials?

Commercial, institutional and industrial waste comprises 40-50% of the solid waste generated in Connecticut. The report should recognize that one of the principle methods to significantly increase recycling rates would be through policies and programs related to commercial, institutional and industrial waste. The report should also address:

- the economics of general commercial and industrial waste disposal practices to better establish financial incentives to achieve the state-wide solid waste objectives
- incentives for small business to recycle so that the costs and benefits to haulers of separating and recycling could be passed on to business
- the alternative of municipal franchising of commercial and industrial waste services if financial incentives fail.

The description of the Berlin facility's recent modifications is over-simplified. This facility is still using its dual stream paper processing line (see page 49). In fact, paper that has been processed through the no-sort (single stream) line is subsequently processed again on the dual stream paper processing line.

The discussion of large-scale food waste generators should not assume 100% of the material could be composted.

The report correctly states (page 54) that there is a better way to assess performance instead of recycling percentages. We hope the final report will include legislative recommendations to accomplish this change.

Resources Recovery

The report should include an update on the federal climate change/renewable energy legislation currently pending in Congress. Federal energy and climate change legislation now under consideration has focused additional positive attention on waste-to-energy ("WTE") projects. The House recently passed the American Clean Energy Leadership Act of 2009, H.R. 2454. This legislation included waste to energy in the Renewable Portfolio Standard and excluded this technology from the carbon caps, reaffirming several favorable aspects of WTE projects from a federal energy and environmental perspective. Senators John Kerry (D-MA), Chairman of the Foreign Relations Committee, and Barbara Boxer (D-CA), Chairman of the Committee on Environment and Public Works recently introduced a climate change bill that exempt waste-to-energy facilities from carbon restrictions under a greenhouse gas cap-and-trade system. The 821-page Clean Energy Jobs and American Power Act (the Kerry-Boxer bill) is the companion legislation to H.R. 2454. In addition to exempting waste-to-energy from the cap, the legislation also creates a grant program for states to expand renewable energy capacity and defines waste-to-energy as renewable. Considering the particular challenges to developing other environmentally friendly power generation technologies here in Connecticut, continued support for our existing WTE facilities is consistent with federal policies and very much in the state's interest.

The report on page 62 indicates that the ash residue from the Bristol project is going to Seneca Meadows, New York. Please note that some or most of the ash residue from the Bristol project is currently going to a landfill in Peabody, MA.

The report's discussion about recycling inspections at the waste to energy projects is not correct. The state's recycling enforcement statutes rely on a hierarchical approach to preventing the unnecessary disposal of recyclable materials. This enforcement system was developed in 1990 and needs to be updated. Generators and haulers have an obligation to keep source separate materials from becoming un-salvageable. This section of the report should be expanded upon and re-written to discuss the entire chain of responsibility for recovering recyclable materials. The focus on the disposal locations is misdirected. The Bristol plan does inspect for recyclables and, with a tipping fee differential of at least $30/ton, there is incentive for the towns to recycle rather than combust for energy. Unfortunately, once the recyclables are delivered to the plant by the collector, they are often contaminated and not able to be recycled.

Landfills

The report correctly identifies problems with the current Certificate of Need statute (page 73). We look forward to seeing the final recommendations in this area.

Summary

We look forward to working with the Legislature on initiatives that encourage environmentally and cost-effective solutions to solid waste management. Thank you for taking the time to study this often overlooked program.

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September 7, 2006

Mr. Michael Harder
Hearing Officer
Bureau of Waste Management
Department of Environmental Protection
79 Elm Street
Hartford, CT 06106

Re: **Comments of the BRRFOC and TROC to the 2006 DEP Proposed Amendment to the State of Connecticut Solid Waste Management Plan**

Dear Mr. Harder:

I am writing on behalf of the Bristol Resource Recovery Facility Operating Committee ("BRRFOC") and the Tunxis Recycling Operating Committee ("TROC") with respect to the July 2006 Proposed Amendment to the State Solid Waste Management Plan ("Proposed Plan"). The agency has taken great strides in preparing the Proposed Plan. We are thankful for the opportunity to participate in this process and commend you for establishing and implementing a well-executed procedure that enabled stakeholders the chance to provide input to the draft plan. We appreciate the fact that DEP has, in several respects, addressed stakeholder comments in the Proposed Plan. The BRRFOC and TROC now take this opportunity to formally comment on both the strategies and weaknesses of the Proposed Plan.

I. OVERVIEW OF CONCERNS AND SHORTCOMINGS OF THE PROPOSED PLAN

Before turning to section by section comments of BRRFOC and TROC on The Proposed Plan, I would like to highlight issues that we do not think have been adequately addressed to date. These overriding concerns, discussed in more detail below, include:

- The Proposed Plan Fails to Adequately Consider or Establish a Strategy to Achieve Statewide Self-Sufficiency in Managing Solid Waste-
    - *The plan does not recognize opportunities unique in Connecticut to achieve self-sufficiency*
    - *The plan does not encourage the implementation of existing Connecticut policy that the management of solid waste is a fundamental governmental responsibility*
    - *The plan does not evaluate the benefits of self-sufficiency including environmental protection, reliability and cost-effectiveness*

- *The plan does not advocate the expansion of existing resource recovery facilities and the siting of new resource recovery facilities to meet the expected five-fold increase in the existing shortfall in capacity by 2024, assuming diversion rates remain steady or a two-fold increase assuming the aggressive 49% diversion rate goal is met*

- Essential Components of Solid Waste Management are Not Fully Addressed in the Proposed Plan-

  - *The plan does not advocate the updating of the certificate of need and the permitting process to enable timely approvals of important solid waste facilities or expansion of existing solid waste facilities*
  - *The plan sidesteps certain important issues by suggesting that policy will be established after future discussion and debate*
  - *The necessity to better manage commercial, institutional and industrial waste to achieve the goals of the plan is not adequately addressed*
  - *The essential role of transfer stations is not analyzed or recognized*
  - *The benefits and importance of electric generation as a component of the state's existing solid waste management infrastructure is not sufficiently recognized*

- The Conclusions and Recommendations of the Plan Should be Clarified-

  - *Certain conclusions and recommendations in the plan are not, in several key instances, consistent with the data and conclusions contained in the appendices*
  - *The tasks outlined in the recommendations of the plan should include more detailed information regarding the DEP (and municipal) resources necessary to accomplish the tasks*

(i) <u>Unique Opportunities Exist in Connecticut</u>

There are several features of the State of Connecticut, which considered together, present a unique opportunity for the State to become nearly self-sufficient with respect to the management of solid waste. These features include: a) the small size of the State; b) its adoption, along with the State of Delaware, of enabling legislation that affords broader authority for the management of solid waste than any other state in the nation; c) nearly every municipality is located within 30 miles of a Resource Recovery Facility ("RRF") or transfer station; and d) the availability of substantial expansion capability of the existing RRFs and recycling facilities.

Connecticut's solid waste infrastructure has worked exceedingly well. It is cost-effective and environmentally sound. In the absence of new infrastructure and state support for recycling in the past ten years, our facilities are over capacity. Connecticut is no longer self-sufficient in managing solid waste generated within its borders. Based on the assumption that a recycling/diversion rate of 49% can be achieved, which is a challenging goal, the Proposed Plan concludes that shortfall in in-state capacity of MSW would be 614,000 tons by the year 2024; nearly doubling the current shortfall of 327,000 tons. *See* Appendix F at pages 12-13. Alarmingly, using the existing 30% rate

assumption of current waste diversion, the shortfall will swell to 1,597,000 tons by 2024; nearly a 500% increase. Those statistics clearly call for an examination and evaluation of the development of an increase in capacity along with an increase in diversion.

The Proposed Plan endorses the goal that Connecticut should become self-sufficient in managing its solid waste, but does not discuss in detail the many reasons why that goal should be achieved and does not set forth any strategy to accomplish it. In fact, parts of the Proposed Plan conclude that the goal is not achievable.

The Proposed Plan should discuss the reasons why self-sufficient disposal capacity within the State is beneficial, the unique features in Connecticut that facilitate a self-sufficient system, and a specific strategy for the State to achieve that goal.

(ii) Recognized Governmental Role of Connecticut Solid Waste Management

The parameters of governmental control of solid waste in Connecticut should be addressed in the Plan. Through its enabling legislation, Connecticut has established public policy that the management of solid waste, like the construction and maintenance of highways and the provision of fire and police services, is a fundamental governmental service and responsibility. That policy is in accord with United States Environmental Protection Agency policy that solid waste collection, recycling and disposal should be under the control of state and local government.

The Proposed Plan makes reference to the statutory authority establishing the CRRA but does not analyze the scope of that authority and how it could be best utilized to take advantage of the several unique factors in Connecticut that lend themselves to statewide, self-sufficient management of solid waste.

The Proposed Plan should advocate more direct local governmental participation in solid waste managed under the authority of that legislation. At a minimum, the Plan should note that such an option exists and better analyze the legal limits of governmental management of solid waste. The Proposed Plan makes passing reference to the United States Supreme Court decision in *C&A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383 (1994) that ruled that certain governmental regulation of private sector solid waste collection and disposal are restricted by the Commerce Clause of the United States Constitution. The Proposed Plan makes no reference to the subsequent United States Second Circuit Court of Appeals decision that the Commerce Clause does not bar regulation of solid waste management that involves more direct governmental participation and management. *United Haulers Assoc., Inc. v. Oneida-Herkimer Solid Waste Mgmt. Authority*, 438 F. 3d 150 (2d Cir. 2001), *cert. denied*, 122 S. Ct. 815 (2002).[1]

For these reasons, the Proposed Plan should discuss in detail the legal authority and the benefits in reliability, cost and environmental protection that could be realized if the State

[1] The Second Circuit is the federal court of appeals that governs the states of Connecticut, New York and Vermont. The Sixth Circuit, which governs the states of Kentucky, Michigan, Ohio and Tennessee, disagreed with the analysis of the *Oneida-Herkimer* decision. *NWWMA v. Daviess Cty.*, 434 F.3d 898 (6th Cir. 2006).

of Connecticut, its municipalities and regional entities undertake the central responsibility for solid waste management, including cost containment and stability. Based on that analysis, the Proposed Plan should advocate that Connecticut implement existing public policy by undertaking greater control of solid waste management to ensure that safe, reliable and cost-effective solid waste and recycling services are provided to our citizens.

(iii) The Benefits of Self-Sufficiency

In addition to adopting the goal of self-sufficiency, the Proposed Plan should analyze and discuss the several advantages associated with self-sufficiency. **Appendices G and I are impressive and make the case that the establishment of self-sufficient management of solid waste within Connecticut would significantly benefit the environment and, at the same time, guarantee reliable and economical waste disposal.** Such a reliable system would be insulated from unforeseen private sector market forces or changes in the policies and capacity of solid waste disposal of other states. Several other benefits will be enjoyed if the State becomes self-sufficient. Among them are the reduction in distances solid wastes are transported which will lower transportation costs and reduce emissions including NO_x, $PM_{2.5}$ and greenhouse gases. Traffic congestion and traffic safety could be improved. In-state disposal at RRFs will also provide a renewal, reliable and environmentally safe energy supply.

(iv) Solid Waste Management Should be Considered in the Context of General Environmental Protection

Attaining self-sufficiency with respect to solid waste management should provide ancillary benefits to environmental quality that were not analyzed in the Proposed Plan. For example, both the Legislature and the DEP recognizes the adverse impacts of truck traffic to air quality in Connecticut. *See Public Act 05-07, Connecticut Clean Diesel Plan*; Department of *Environmental Protection Fact Sheet regarding Diesel Initiatives and Diesel Health*[2]. Appendix I of the Proposed Plan includes general data regarding air pollution resulting from diesel emissions caused by truck traffic. However, no analysis is contained in the Proposal Plan and no conclusions reached regarding reduced air pollution that could be realized by the reduction in truck travel through direct implementation and oversight of in-state solutions financed and overseen by municipal or regional solid waste entities.

Further, considering the state-recognized policy that landfilling of municipal solid waste is contrary to important public health considerations, the Proposed Plan should specifically indicate that out-of-state landfilling is not an endorsed solution in the management of Connecticut solid waste.

Other aspects of the plan also warrant a broader analysis regarding general environmental impacts. For example, the plan advocates that the recycling of plastics 1 and 2 be mandated for all communities. Many communities, included those served by TROC,

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2 *See*, http://dep.state.ct.us/air2/diesel/.

already recycle those plastics. However, the interests of environmental protection will probably not be well served by such a mandate in those communities where the population density and trucking distances, coupled with the light weight and large space associated with those recyclables, results in a net detriment to the environment due to air quality impacts. We believe that those impacts should be considered before a statewide mandate is imposed.

(v) Private Ownership of Solid Waste Facilities

Another factor related to a policy of self-sufficiency not addressed in the Proposed Plan is the reversion of solid waste facilities to private ownership. Unforeseen market forces may adversely impact the profitability of privately owned solid waste management facilities and could cause facilities to close or reduce capacity. Private sector ownership could result in a significant increase in MSW imports to the detriment of Connecticut taxpayers. Without the cost-controls established by government operation and control of solid waste management, private market forces could result in dramatic cost increases like those experienced with electricity prices after privatization of that industry. I previously outlined the substantial risks associated with privatization of the six regional trash to energy plants in the attached Hartford Courant op-ed article entitled *Don't Let Connecticut's Trash Plants Go Private.* The costs and benefits of privatization of solid waste facilities should be analyzed in more detail in the Proposed Plan.

(vi) The Proposed Plan Should Advocate Solutions Rather than Raise Questions for Future Debate

The Proposed Plan, at several places, references solid waste management issues that should be the subject of future debate or discussions. For example, the executive summary states on page ES-8 that it is the "intent of this Plan to stimulate discussion and further debate" on how the State could become self-sufficient in managing solid waste. On the next page, the summary states that the Proposed Plan takes no position regarding whether solid waste management facilities should transfer from public to private ownership but, instead, "does urge the State's decision-makers to take note of the issue, fully debate it, and make the prudent decisions necessary to ensure that the interests of Connecticut's citizens and businesses are protected."

It goes without saying that solid waste management will be directed in large part by public policy implemented by state and local government in the future. The function of the Proposed Plan should be to advocate solutions after analyzing existing solid waste management policy and expected trends and opportunities in the future. The Proposed Plan should reach a conclusion or a recommendation with respect to each matter analyzed and discussed in the plan, especially on matters crucial to solid waste management such as the strategy to achieve self-sufficiency in the State and the benefits and risks associated with private ownership of the infrastructure of solid waste management in Connecticut.

(vii) Commercial, Institutional and Industrial Wastes

The Proposed Plan, particularly with respect to recycling and reuse, does not adequately discuss nor analyze the role of commercial, institutional and industrial waste in future solid waste management. **Significantly, that waste stream comprises one half of the solid waste generated in Connecticut.** There is no reliable data in the plan upon which to base a conclusion regarding possible increases in the generation of industrial, institutional and commercial solid waste. The only data used in the plan was 1990 residential recycling rates. Because the State should expect relatively modest increases in residential recycling rates, the plan should recognize that the principle method to significantly increase recycling rates would be through policies and programs related to commercial, institutional and industrial waste. The Proposed Plan makes no specific recommendations to accomplish that task.

The Proposed Plan should also better address the economics of general commercial and industrial waste disposal practices to better establish financial incentives to achieve the state-wide solid waste objectives. The plan should discuss the establishment of incentives for small business to recycle so that the costs and benefits to haulers of separating and recycling could be passed on to business. The plan should also consider the alternative of municipal franchising of commercial and industrial waste services if financial incentives fail. The Proposed Plan should also endorse programs such as income, corporate or property tax relief and reference and discuss congressional efforts to provide tax relief in the RISE Act (Recycling Investment Saves Energy) introduced in July 2006 by Senators Jim Jeffords of Vermont and Tom Carper of Delaware. *2006 Senate Bill* 3654.

(viii) Role of Electric Generation

The role of solid waste as a renewable source of electric power is not sufficiently discussed or analyzed in the plan. The fundamental purpose of adoption of the initial solid waste management plan in Connecticut was to improve public health and to reduce active landfills. That system has been put in place resulting in the virtual elimination of landfills and the construction of waste to energy facilities that currently dispose of 85% of Connecticut's post-recycled trash and produce 194 megawatts of power that serves 2-5% of all electricity needs in Connecticut. The waste-to-energy plants are clean, local, renewable, and operate on fuel indigenous to the state. The facilities are nearly 100% operational during periods of peak energy demand and are geographically dispersed across the State. The attached three-page testimony of the BRRFOC at the 3rd Legislative Energy Summit held on August 10, 2006 outlines the essential facts supporting public policy encouraging additional resource recovery facilities in Connecticut.

Considering the recognized need for environmentally-friendly methods to meet energy demands, solid waste management serves an important role in energy production that should grow if a system of self-sufficiency is established. The plan should acknowledge that the current solid waste management system works and discuss how success can be leveraged to better serve the energy needs of the State.

(ix) The Role of Transfer Stations

The 116 transfer stations in Connecticut are an essential component of the overall solid waste management system in Connecticut. Nonetheless, only one paragraph contained in Appendix F of the Proposed Plan is devoted to the function of transfer stations in the scheme of solid waste management in Connecticut. A more comprehensive discussion regarding transfer stations, including how they are sited and best utilized, should be included in the plan. It is unclear how DEP hopes to achieve the goals of the Plan without maximizing the State's transfer station resources.

(x) Certificate of Need Policy and Process Should be Updated

Additional solid waste management facilities are essential to accomplish the goals of the Proposed Plan. **The Proposed Plan adopts the goal of self-sufficiency and determines that the existing shortfall in capacity will at least double, and may increase by 500% by the year 2024.** Because new facilities are undoubtedly necessary, the existing certificate of need policy should be updated to enable timely review and approval of proposed new facilities and/or the expansion of the existing facilities to increase in-state capacity of solid waste disposal.

In addition, the policy should be updated to encourage siting of additional ash residue disposal sites. The Proposed Plan determines that the two permitted facilities for the disposal of RRF ash residue, one of which will soon close, have sufficient capacity to accommodate ash residue from each of the RRF's in Connecticut for at least twelve years. The Plan's review of ash disposal is overly simplistic and creates a defacto $20 million monopoly for ash disposal in the state. The Proposed Plan should encourage the permitting of other ash disposal facilities to address the anticipated future need for ash disposal. Additional permitted facilities would reduce inherent risks associated with relying on a single source for all in-state disposal.

The certificate of need process for MSW and transfer station facilities should also be updated. **The current certificate of need process is outdated. The revisions should include economic and competitiveness issues and emergency management.**

As part of that process, an economic analysis regarding construction and expansion of MSW facilities should be undertaken on a State-wide scale.

(xi) The Implementation Plan Should More Specifically Describe the Necessary Resources Associated with Goals

The Proposed Plan is greatly improved by the inclusion of a matrix outlining the steps to implement the goals of the plan. The implementation plan is obviously a crucial element of the Proposed Plan. It includes symbols for the relative costs associated with implementation of the Proposed Plan's goals, but does not include any information regarding the actual anticipated costs of accomplishing the tasks. At least with respect to the tasks that the Proposed Plan identifies as high priority, a specific cost estimate should

be developed to accomplish the task. Where applicable, it should also include an estimate of the associated impact in the diversion rate if the task is not accomplished.

Further, the Proposed Plan should describe the steps that will be taken by DEP to ensure that staff resources dedicated to implementing the objectives of the Plan are not diverted to other projects. How will DEP be held accountable for staff allocation on Plan implementation?

(xii) Consistency of the Proposed Plans with Data and Conclusion of the Appendices

The final observation, before we turn to more specific comments of the Proposed Plan, is a concern that **the overall conclusions and recommendations of the plan do not, in several key instances, reflect the data and conclusions contained in the appendices of the plan.** The overall narrative should be revised, as discussed in more detail below, to be consistent with the conclusion of the specific analysis of the appendices.

II. SPECIFIC COMMENTS ON THE CONTENTS OF THE PROPOSED PLAN AND APPENDICES

Under the headings and numbering contained in the Proposed Plan and appendices, the BRRFOC and TROC offer the following specific comments to the Proposed Plan:

CHAPTER 2
CURRENT CONDITIONS AND PRACTICES: CONNECTICUT AT A CROSS ROADS

2.2 Solid Waste Generation and Management Practices in Connecticut

This section outlines a hierarchy of solid waste management but does not reference the threats and opportunities associated with the lack of a truly regionalized plan for the management of solid waste within the State. Past policy resulted in the formation/creation of the CRRA and various regional quasi-governmental solid waste management organizations including BRRFOC. Nearly all of the 169 municipalities in Connecticut are located within 30 miles of an RRF or transfer station. No policy is in place to maximize the efficiency and reduce the transportation costs associated with best use of these existing facilities. The Proposed Plan should also consider whether a uniform tipping fee would result in more efficient management of solid waste generated within the state.

2.2.6 Management of Other Types of "Special Wastes"

Household Hazardous Wastes (HHW)

The current system while generally effective, fails to provide for public participation of small business. The Proposed Plan should advocate participation of small businesses in the program. Current restrictions, including permitting requirements, provide significant hurdles for

business that generate small quantities of hazardous waste (Conditional Exempt Small Quantity Generators) from participating in the existing system for disposal of small quantities of HHW. Eliminating those barriers would encourage proper and cost-effective disposal of hazardous waste generated by the small businesses in the same fashion that it has with the small quantities of hazardous waste generated by households.

2.4 Key Factors Affecting Solid Waste Management in Connecticut

Demonstration that very high waste diversion rates in other states and communities have been achieved.

We certainly agree that the Proposed Plan should advocate an increase in diversion of solid waste. The Proposed Plan should not suggest that diversion rates in certain other states are far superior to Connecticut. No uniform method of measuring and reporting waste diversion rates has been established. As a result, there is no basis to compare waste diversion rates between states. The Proposed Plan should acknowledge the shortfalls in attempting to compare diversion rates with the data from other states and advocate development of a standardized method of determining those rates. The conclusion that the statewide waste diversion in other states is superior to Connecticut should be eliminated

There is an increasing regional capacity for solid waste disposal.

The Proposed Plan includes the assertion that the regional capacity for solid waste disposal is increasing. That conclusion should be supported by specific facts.

Solid waste is a commodity.

The Proposed Plan references the Supreme Court precedent *Carbone* regarding flow control and the role of the interstate commerce clause in the United States Constitution on solid waste management. Because a number of the recommendations contained in the Proposed Plan may implicate constitutional limitations, more specific legal analysis should be included in the plan including discussion of the *Carbone* and *Oneida-Herkimer* decisions noted above.

2.5 Address Key Issues that Will Determine Connecticut's Future Direction

Connecticut is projected to have an increasing shortfall of MSW and C&D waste/over-sized MSW in-state disposal capacity.

Based on the assumption that a recycling/diversion rate of 49% can be achieved, which is a challenging goal, the Proposed Plan concludes that the shortfall in in-state capacity of MSW would be 614,000 tons by the year 2024; nearly twice the current amount of 327,000 tons. *See* Appendix F at pages 12-13. Alarmingly, using the existing 30% rate assumption of current waste diversion, the shortfall will swell to 1,597,000 tons by 2024; nearly a 500% increase. These figures, coupled with the goal to achieve self-sufficiency, call for more aggressive solutions to increase in-state capacity.

The projections of waste generation and in-state capacity shortfall should be reevaluated to take into account the availability of the expansion capacity of existing facilities. The Proposed Plan concludes that the only way to handle the increase in generation is to increase diversion from disposal and source reduction. The Plan should include an analysis of whether expansion of existing facilities could be undertaken to augment diversion and source reduction to manage increases in solid waste generation. For example, existing RRFs could add non-ferrous recovery systems. In addition, beneficial use of RRF ash would greatly change the assumptions in the Plan.

2.5 Addressing Key Issues That Will Determine Connecticut's Future Directions

To what extent should Connecticut see to increase waste diversion through source reduction, recycling and composting? How can Connecticut accomplish this?

The Proposed Plan establishes the goal that waste diversion levels will be increased from existing levels of 30% to 49%. The BRRFOC and TROC obviously support cost-effective and environmentally sound efforts to increase the diversion of waste utilizing source reduction and recycling. We believe that that Proposed Plan should include goals for the increase in recycling that are reasonably obtainable. Given the information available to us now, even if the recommendations of the plan are reasonably successful, it is very unlikely that the recycling rate of 49% would be achieved by 2024. If the recycling programs are more successful than we can currently anticipate, the Plan can be amended at a later date as part of the periodic updates recommended.

Commercial, institutional and industrial sources comprise 50% of all solid waste generated in Connecticut. The State will certainly not reach the suggested 49% recycling rate without including those sectors. The Plan should discuss the establishment of incentives for small business to recycle, such as similar legislation to the RISE Bill discussed previously. It should also include incentives to encourage haulers to separate and recycle. The Proposed Plan should also consider the alternative of municipal franchising of commercial and industrial waste services if financial incentives fail.

The Proposed Plan should also discuss institutional sources of solid waste. As a significant generator of solid waste, institutional waste must also be considered if the substantial diversion rate is to be achieved. The Proposed Plan should include analysis and recommendations regarding source reduction, recycling and reuse of solid waste generated at institutions within Connecticut.

The Proposed Plan should advocate that the 1990 solid waste legislation be updated with respect to commercial, industrial and institutional solid waste management. A legislative update should also amend the mechanism for policing commercial, industrial and institutional regulatory compliance. For a variety of reasons, waste haulers should not be the front line for monitoring compliance.

CHAPTER 3
FROM WASTE MANAGEMENT TO RESOURCE MANAGEMENT: A LONG-RANGE VISION FOR CONNECTICUT

3.2 Guiding Principles

Shared Responsibility

The vision of having "manufacturers, other companies and the product supply chain and their customers" share in the responsibility of reuse and recycling programs should be amended to included "retailers". Retailers should be expressly included in reuse and recycling programs. In addition, DEP should work on national and regional legislative solutions to problems associated with packaging.

CHAPTER 4
MOVING TOWARDS CONNECTICUT'S VISION: OBJECTIVE AND STRATEGIES

4.3 Objectives And Strategies

Strategies to Reduce the Amount and Toxicity of Solid Waste General Strategy 1-6. Promote through such activities as technical assistance, start-up funding, and/or other incentives, the implementation of effective PAYT pricing systems by municipalities and haulers for managing solid waste from residents and small businesses to achieve waste reduction.

The BRRFOC and TROC support assistance and incentive to encourage PAYT programs and agree that the programs should not be mandated.

4.3.2 Objective 2. Recycling and Composting

Recycling/Composting Mandates

Haulers

Haulers have an important role in assisting with the enforcement of recycling mandates. They should not be considered or expected to be the front line in policing and enforcing recycling mandates. However, the role of haulers in the solid waste management picture can not be glossed over. We understand that the final version of the Plan will be complimentary to the recommendations of the Governor's Task Force on Statewide Hauler Licensing; nonetheless, with the majority of collection efforts being conducted by private haulers, DEP needs to be clear as to how it plans to engage the hauling community as a partner in achieving the goals of the Plan.

Recycling/Composting Outreach Programs

The Proposed Plan outlines some of the outreach programs undertaken in the State, including the market research study undertaken by TROC to determine ways to increase

recycling. Based on the varying demographics in recycling programs in Connecticut, the Proposed Plan should specifically advocate that a State-wide market study be performed so that resources can be best targeted to increase recycling.

Recycling and Composting Opportunities and Priorities

Incentives should include tax incentives comparable to the RISE Bill pending before the Congress.

Strategies to Increase Recycling

Strategy 2-4 Establish a subcommittee of the Agency's Solid Waste Management Advisory Committee for the purpose of identifying methods to implement PAYT on a voluntary basis. Specifically the subcommittee will identify incentives for municipalities and haulers to implement effective PAYT pricing systems for managing solid waste from residents and small businesses to achieve waste reduction.

The BRRFOC and TROC endorse the proposal that a subcommittee of the DEP's Solid Waste Management Advisory Board be established to determine methods to encourage and implement PAYT on a voluntary basis. We oppose mandates for PAYT.

Strategy 2-8. Develop the infrastructure necessary to increase the amount of paper that is recycled. Create incentives and funding for increased paper recycling and for source reducing the amount of waste paper generated.

The BRRFOC and TROC strongly support the policy that the State provide assistance and direction to establish the necessary infrastructure to collect and recycle additional amounts and types of paper and paper mixes.

4.3.3 Objective 3. Management of Solid Waste Requiring Disposal

Current Management of Connecticut Solid Waste Requiring Disposal

MSW Disposal Management Systems

The Proposed Plan erroneously states that out-of-state facilities are the only option for additional MSW requiring disposal. Expansion of existing facilities is a preferred option that should be encouraged in the plan.

MSW Disposal Management System

The determination of need process and the permitting process for MSW and ash residue facilities should be reviewed and revised to enable fast-track approvals to encourage an increase in-state capacity.

RRF Ash Residue

Only one in-state facility will exist to accept ash residue after October 2008. The Proposed Plan should endorse the siting and permitting of at least one other facility in the state to assure in-state capacity if unforeseen events cause the closing of the Putnam facility and also to foster economic competitiveness.

Strategies for Disposing Solid Waste

Strategy 3-2 The State will monitor solid waste generation and capacity on a regular basis, and with input from the Solid Waste Advisory Committee, evaluate the need for additional MSW, ash residue and C&D waste disposal capacity

The need for additional capacity is well-established by the data in the Proposed Plan. The State need not monitor generation to conclude that additional in-state capacity is necessary.

Strategy 3–3 The Department will seek legislative authorization to require any applicant for new RRF or landfill capacity, at the time any application is submitted to DEP, to create a fund to be accessed by the host municipality, to (1) create a local advisory committee and (2) hire appropriate experts, to assist the host municipality in reviewing the application and taking part in the application process. The advisory committee should include elected officials and residents from both the host community and contiguous communities.

The Proposed Plan should recommend simplifying and reducing the barriers to establishing facilities to increase in-state capacity to manage MSW. Imposing a mandate that a committee of officials from all communities neighboring a proposed site be formed to review any application to establish a facility and further requiring an applicant to fund what will likely be local opposition to siting provides a disincentive to the establishment of new facilities.

Electronic Wastes

The BRRFOC and TROC support implementation of legislation for the recycling of electronic wastes. Several states, including California, Maine, Maryland and Washington, have adopted legislation that could form a model for legislation in the State of Connecticut regarding electronic recycling. The Proposed Plan should discuss the role of retailers in an electronic recycling program. Convenience is a paramount goal in successfully achieving recycling of electronics. The retail industry, which is grounded on providing convenient service, should be considered as a focal point in electronics recycling. Connecticut will go from leader to laggard if the State fails to take timely action on electronics recycling.

4.3.5 Objective 5. Education and Outreach

Overview

The BRRFOC and TROC strongly disagree with the blanket statement that recycling education efforts at the local and regional levels have diminished. The Proposed Plan should certainly advocate increased funding and support for education, but should not include a

conclusion that discredits those municipalities and regions that have worked hard in a difficult financial climate to steadily maintain or increase their educational outreach.

Education and Outreach Opportunities and Priorities

The BRRFOC and TROC support the role of the DEP in establishing a comprehensive source reduction and recycling education program. The Proposed Plan proposes only a modest role for the agency. A resource reduction/recycling coordinator at the agency should be established to facilitate the comprehensive program advocated by the Proposed Plan.

Objective 4.3.6 Objective 6. Program Planning, Evaluation and Measurement

Overview Program Planning, Evaluation of Measurement

Undoubtedly, a uniform method of measuring the management of MSW must be established. Once established, specific State-wide goals should be set and monitored.

Strategies 6-1 and 6-2

The BRRFOC and TROC applaud the strategy of the Proposed Plan that disposal goals be established on a per capita basis and that the cumbersome reporting burdens currently imposed on municipalities and regional waste management organizations be substantially reduced.

Strategy 6-3: Establish a standing Solid Waste Management Advisory Committee of affected stakeholders to help implement the new plan, revise the plan, identify emerging issues and find solutions.

The BRRFOC and TROC, in concept, endorse the strategy of establishing a standing Solid Waste Management Plan Advisory Committee. The discussion regarding establishment of that committee should include more detail on the duties of such a committee and what role it would play, if any, in the future adoption or implementation of the solid waste management plans.

The plan could reference the Connecticut Energy Advisory Board as a model for establishing an effective committee. By employing that model, a standing Solid Waste Management Advisory Committee may be able to accomplish annual updates of the solid waste management plan as recommended by the Proposed Plan.

4.37 Objective 7. Permitting and Enforcement

Strategies for Improving the Solid Waste Permitting and Enforcement Programs

The BRRFOC and TROC believe that business and industry are a crucial source of future increases in recycling and re-use programs in Connecticut. Existing law, however, exempts those sources of solid waste from municipal control absent implementation of franchise territories. Existing legislation should be carefully reviewed and updated to impose reasonable requirements

on business and industry to re-use and recycle solid waste, and where possible, achieve consistency with US EPA and other New England state initiatives.

In accordance with existing State policy that the management of solid waste is an essential government function that should be closely managed and controlled by the State, the BRRFOC and TROC support permit requirements for transporters of solid waste. Recommendations regarding regulation of transporters, like any element of governmental management of solid waste, should be analyzed in accordance with constitutional requirements related to interstate commerce. The Solid Waste Management Plan for the state of New Jersey provides an example of an analysis of constitutional requirements and limitations as applied to that state's policies for the management of solid waste.

4.3.8 Objective & Funding

Funding Needs

The Proposed Plan should also recommend the expansion and funding of effective voluntary business compliance models like the Connecticut Business Environmental Council.

Strategies-Funding

Expand the Current $1.50 fee on waste processed at Connecticut RRFs to all disposed solid waste, including all MSW, C&D debris, and over-sized MSW, whether disposed in-state or out-of-state

The need for and the use of the monies generated by the expansion of the fee should be discussed as well as the enforcement difficulties that may exist for capturing fees related to wastes disposed of out-of-state. The potential legal barriers to such taxation should also be included in the Proposed Plan.

CHAPTER 5
IMPLEMENTATION CONSIDERATIONS

5.2.3 Role of the Connecticut Resources Recovery Authority (CRRA)

Existing legislation affords broad authority to the CRRA that could be employed to achieve the goal of self-sufficiency and better statewide management of solid waste disposal. The Proposed Plan correctly acknowledges that now is the time to consider the proper role of CRRA. It should identify the suggested/legislative role of CRRA rather than suggest that a future discussion is warranted.

5.3.5 Bristol RRF

The expiration date of the contract with Covanta should be amended from 2015 to 2014.

Appendix D
CURRENT MSW WASTE DIVERSION PRACTICES

Commercial Material Flow

The discussion regarding the economics of incorporating commercial generators into recycling programs acknowledges that the cost savings associated with reducing tipping fees for solid waste is not presently a sufficient incentive to increase recycling. Further, haulers have no reason to provide financial incentives in their contracts with commercial generators to increase the amount of the waste that is diverted to recycling. The analysis should be reflected in the body of the Proposed Plan.

Appendix E
OPTIONS TO INCREASE WASTE DIVERSION

The Opportunities to Increase Waste Diversion

The five categories of waste diversion identified should be prioritized and evaluated pursuant to a cost-benefit analysis.

Appendix F
SOLID WASTE DISPOSAL OVERVIEW

The single paragraph beginning at the bottom of Page F-15 contains the only discussion regarding transfer stations in the plan. As noted above, the role of transfer stations in the solid waste management plan should be thoroughly considered in the Proposed Plan and appendices.

Appendix G
COST ANALYSIS OF OUT-OF-STATE DISPOSAL OPTIONS

The analysis contained in Appendix G is impressive and the conclusions appropriate. The analysis provides justification that the plan should endorse a policy of self-sufficiency for management of solid waste generated in the state.

The conclusions in Appendix G are not consistent with the statements contained in the general narrative of the plan. For example, the conclusion that disposal of solid waste at RRFs in Connecticut is more cost-effective than out-of-state disposal options is reached in the appendix but not reflected in the plan itself.

Appendix I
ENVIRONMENTAL IMPACT OF DISPOSAL OPTIONS

Like Appendix G, the conclusions of Appendix I regarding environmental impact supports a policy goal that all MSW generated in Connecticut should be managed and disposed of in Connecticut. For example, on Page I-21, the appendix concludes that disposal at an in-state RRF poses less risk of negative environmental impacts than landfills

located either in or outside of the state. That fact should be outlined in the body of the Proposed Plan.

III. CONCLUSION

The BRRFOC and TROC would again like to thank you for the hard work undertaken by you and your agency to establish the Proposed Plan and to implement the policy of stakeholder and public review and comment. We appreciate your careful consideration of our comments, concerns and recommendations in proceeding towards adoption of a final plan.

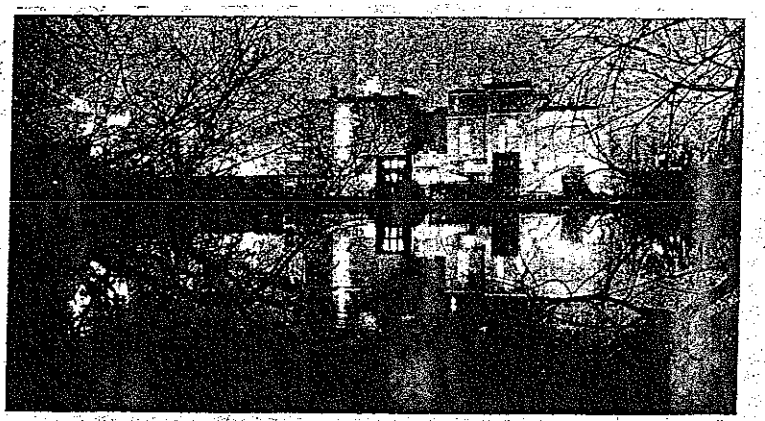
Very truly yours,

Jonathan Bilmes, P.E., Q.E.P.
Executive Director

JSB:kz

Enc.

cc: BRRFOC & TROC Member Towns and Chief Elected Officials



MICHAEL KODAS / THE HARTFORD COURANT

SIX REGIONAL TRASH-TO-ENERGY PLANTS turn most of the state's municipal solid waste into electricity. The Connecticut Resources Recovery Authority trash plant in Hartford's South Meadows shines out over the Connecticut River at night.

Don't Let Connecticut's Trash Plants Go Private

In 1998, the Connecticut General Assembly passed legislation deregulating the electric industry. While the move toward deregulation was motivated by good intentions — creating a more competitive business environment by giving consumers a choice of affordable electricity providers — virtually

JONATHAN BILMES

everyone acknowledges, in Connecticut and many other states, that deregulation is not working.

Electric rates have increased rapidly, and the prospects of continuing power shortages are all too real. As a result, legislators are scrambling to put the genie back into the bottle.

Unfortunately, a similar problem is looming for the state's trash disposal system.

Connecticut has established public policy that the management of solid waste, like the construction and maintenance of highways and the provision of fire and police services, is a fundamental governmental service and responsibility. Combustion of municipal solid waste was favored in order to minimize landfills and to generate needed electricity.

As a result, we have a waste-to-energy system that manages and safely disposes of 90-95 percent of the state's municipal solid waste that is not recycled. Quasi-public organizations like the Bristol Resource Recovery Facility Operating Committee were created in the 1980s to oversee and manage a system that is efficient, environmentally sound — the EPA notes that the nation's waste-to-energy plants produce electricity with less environmental impact than almost any other source — and a model of public-private partnerships.

Of great concern, however, is the fact that the cornerstones of Connecticut's waste-to-energy system — the six regional plants that safely turn more than 5,800 tons of trash each day into 194 megawatts of clean power — could end up without government oversight and subject to unfavorable market conditions. Sounds like electricity deregulation.

Why? Complex tax laws and other unique circumstances were in play when the waste-to-energy projects were financed. As a result, a number of the state's trash plants operate under long-term contracts that call for the facilities to revert to 100 percent private ownership in the near future.

If nothing is done to prevent waste-to-energy facilities from reverting to total private ownership, within 10 years the waste-to-energy industry is likely to experience the same runaway costs that the state is dealing with now among electricity generators. Unforeseen market forces may adversely impact the profitability of privately owned solid waste management facilities and could cause facilities to close or reduce capacity.

Conversely, without the cost controls established by government operation and control of solid waste management, private market forces could cause dramatic cost increases like those experienced with electricity prices under deregulation. The supply and pricing problems Connecticut is experiencing in the energy field could be repeated in the solid waste industry.

Sound public policy led to Connecticut's commitment to resources recovery in the 1980s. Over the years, our waste-to-energy facilities have effectively and efficiently met an essential and important public health need through the safe handling and disposal of the state's solid waste. They have the potential capacity to handle all of the 400,000 tons of trash currently shipped out of state. Our trash plants produce clean, renewable, local electricity — enough power to save the equivalent of more than 2.6 million barrels of oil annually.

The Connecticut Department of Environmental Protection and other state policy-makers should do everything possible to ensure the continuation of a technology and system that has served Connecticut well for more than 20 years.

Let's not repeat the mistakes we have made in deregulating the electric industry. Our waste-to-energy system "ain't broke." The status quo works and needs to be preserved.

Jonathan Bilmes is the executive director of the Bristol Resources Recovery Facility Operating Committee.

Bristol Resource Recovery Facility Operating Committee

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Testimony of the Bristol Resource Recovery Facility Operating Committee at the 3rd Legislative Energy Summit August 10, 2006

Good afternoon Senator President Williams, House Speaker Amman, Legislative Leaders and Members of the Legislative Energy Summit Panel. My name is Jonathan S. Bilmes and I am the Executive Director of the Bristol Resource Recovery Facility Operating Committee. The organization is made up of 14 towns and cities in Connecticut representing over 10% of the state's population. We are concerned with the safe, environmental and cost-effective disposal of municipal solid waste and recyclables. A key part of our system is the 16MW waste-to-energy facility in Bristol.

As you consider additional energy legislation, I am here to emphasize that we are part of the solution to Connecticut's problem. By using existing, proven, environmentally beneficial technology, we can help Connecticut with renewable energy production as well as solid waste disposal, two pressing problems requiring legislative attention. As you move forward with the process, we ask that you consider the following facts:

- Existing Resource Recovery Facilities (RRFs) collectively provide vital trash disposal, recycling, resources recovery, and electricity generation to practically the entire State of Connecticut. According to DEP[1] , 85% of the total MSW disposed of in the state (after recycling) was managed by the state's six Resource Recovery Facilities. RRFs service 140 towns and cities[2] and provide power for the equivalent of 240,000 households.

- These Facilities also collectively generate 2-5% of Connecticut's total generation resources. The municipal solid waste used by the Facilities to generate electricity is an indigenous, renewable fuel resource which is not subject to the supply disruptions and price fluctuations associated with fossil fuels such as oil and natural gas. It is estimated that the Facilities' generation of electricity from municipal solid waste saves over 2 million barrels of oil annually. The Facilities also provide geographic diversity to Connecticut's generation resources. Recent annual filings by the Connecticut Siting Council[3] have noted the advantages of using municipal solid waste to generate electricity. Plants operate 365-days-a-year, 24-hours a day, typically at 90%-95% of installed capacity.

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1 Proposed Amendment to the State Solid Waste Management Plan, July, 2006, p. F-4.

2 ibid., p F-8.

3 The advantages of the use of municipal solid waste to generate electricity was recently noted by the Connecticut Siting Council in its recently - released 2005 -2014 Review of the Ten Year Forecast of Connecticut Loads and Resources, ("2005 CSC Review") wherein it stated that "[s]olid waste has the advantage of being a renewable, locally supplied fuel and it contributes to Connecticut's fuel diversity. It is not affected by market price volatility, supply disruptions - significant advantages over fossil fuels. In addition, the combustion of solid waste produces relatively low levels of greenhouse gas, and reduces the amount of space needed for landfills." 2005 CSC Review at page 11.

- Waste-to-energy is "clean, reliable, renewable" energy, according to the U.S. EPA. The Federal Power Act, the Public Utility Regulatory Policies Act, the Federal Energy Regulatory Commission regulations, and the Biomass Research and Development Act of 2000 all recognize waste-to-energy power as renewable biomass, as do fifteen states that have enacted electric restructuring laws. *(EPA Letter to Zannes 2/14/03, Ibid.; President George Bush's 1992 National Energy Strategy, page 126; see also FERC regulations 18 CFR Ch.1, 4/96 Edition, Section 292.204)*

- The legislature fully debated the merits of waste to energy conversion when it classified this power as a Class II Renewable in 1998. Fifteen other states also define waste-to-energy as renewable power including California, Connecticut, Hawaii, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, Pennsylvania, Virginia, and Washington.

- Furthermore, as shown in a recent Department of Environmental Protection draft Solid Waste Management Plan, Connecticut faces a current and growing shortfall of disposal capacity for municipal solid waste. Therefore, additional trash – to – energy facilities will be needed in the future. DEP states, "it is good public policy to manage Connecticut's waste within its borders[4] ."

- The present legal and regulatory framework for the Facilities is the product of decades of hard work by the legislature, administrative agencies, and a host of other public and private entities.

- The biomass content of waste-to-energy's fuel, municipal solid waste, is about 75% on heat content basis. *(Decision Support Tool, U.S. Environmental Protection Agency, Research Triangle Park; see also www.rti.org/units/ese/p2/lca.cfm#life)*

- Turning garbage into energy makes "important contributions to the overall effort to achieve increased renewable energy use and the many associated positive environmental benefits," according to the U.S. Department of Energy. (Letter to M. Zannes from David Garman, Assistant Secretary for Energy Efficiency and Renewable Energy, U.S. DOE, 4/23/03)

- Expansion of RRFs will also help Connecticut meets its obligations under the RGGI. The use of waste-to-energy technology prevents the release of greenhouse gases in the form of carbon dioxide equivalents that otherwise would be released into the atmosphere, according to the U.S. Environmental Protection Agency's Decision Support Tool program. Operation of waste-to-energy plants avoids the release of methane that otherwise would be emitted when trash decomposes, and the release of CO2 that would be emitted from generating electricity from fossil fuels.

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[4] Proposed Amendment to the State Solid Waste Management Plan, July, 2006, p. 2-24.

For all of the above reasons, it makes perfectly good sense for the legislature to take steps to encourage additional RRFs. Some of the steps that can be taken:

- Require the utilities to continue to enter into long term contracts (e.g. ten years) at avoided costs to ensure price stability.
- Require the utilities and the DPUC to recognize the fact that our power can be committed to Connecticut electric customers for the long-term. This capacity value is not recognized in today's ISO markets.
- Encourage efforts to convert/retain ownership of the plants by the public sector, thereby ensuring that any electricity sold will be for the benefit of Connecticut citizens and ratepayers.
- Consider reclassifying Waste to Energy as a Class I renewable and/or limit Class II RPS compliance to facilities located in the state.
- Continue to require that the electric companies handle our power. Today, the electric company handles the bidding and settlement of our power in wholesale markets, dealing with the maze of ISO market rules. Because they are doing so for multiple transactions, they can maintain the expertise to do so efficiently. If each WTE facility must handle these transactions on its own, we will need to add staff or contract this function out to an outside expert. This function is best handled by our utilities.
- With regards to provisions in the Working Draft of AN ACT CONCERNING CONNECTICUT'S ENERGY FUTURE,
    - Section 59: Consider exempting all renewable energy projects from the net energy analysis.
    - Sections 62/63: Consider adding a section requiring DEP to expedite permitting for all renewable energy projects.

Thank you for your attention. I would be happy to answer any questions you might have.

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Testimony of the
Bristol Resource Recovery Facility Operating Committee
to the
Legislative Program and Review Investigations Committee
Resources Recovery Facility Ownership: Options and Implications
Tuesday, September 23, 2008 – Room 1B – Legislative Office Building

Good Afternoon. My name is Jonathan Bilmes. I am the Executive Director of the Bristol Resource Recovery Facility Operating Committee. I have several brief comments regarding the Program Review Staff Briefing on Resources Recovery Facility Ownership.

First, I want to acknowledge the hard work of the Program Review Staff. I believe the Staff Briefing paper, for the most part, correctly identifies the key issues. There are several corrections/clarifications I would like to submit to the Program Review Committee:

The first page of the report indicates that ownership concerns may be raised about non-CRRA facilities. We, being a non-CRRA facility, agree wholeheartedly. In addition, there are several other projects/regions in the state, such as the HRRA, that are facing similar concerns about ownership of their primary disposal/transfer site that should be included in this report..

The report discusses capacity of the facilities and concerns about the amount of waste that can't be processed. I feel a range of numbers should be used to determine capacity..using the high range of 92-93 percent may be too optimistic. State policy makers should understand the ramifications of the waste to energy plants operating at guaranteed capacities, more like 85%, given their age and potential ownership shift. We made these same comments during the DEP SWMP process.

We disagree with the comment made later in the report regarding the incompatibility of waste to energy, properly sized, and recycling efforts. Numerous reports have provided data showing that waste to energy and recycling are compatible, especially when resource recovery capacity is limited as it is in CT. Almost ten years ago, I co-authored a report for the US Conference of Mayors entitled "Compatibility of Waste to Energy and Recycling." Just released is another report written by Eileen Berenyi, "A Compatibility Study: Recycling and Waste to Energy Work in Concert," available at www.wte.org.

With regards to recycling and the state's goals, it should be noted that the SWMP called for dramatic increases in waste diversion rates but provided no money to do so. Further, since the plan was adopted in 2006, there have been two legislative sessions, neither of which provided any additional funding for recycling. To the extent one can compare

recycling rates from state to state, I believe that it is institutional and funding issues that have inhibited recycling efforts in this state.

I do believe that the Staff Briefing correctly identified the fact that the ownership/control issue is important vis a vis reaching new state goals on recycling. A comprehensive analysis of the state's solid waste system was supposed to be completed through the SWMP process. As we, and others, have commented, that plan did not present comprehensive, realistic recommendations for achieving the goals. One area that was discussed at length during the plan development was the ownership issue of the WTEs. As you know, the Plan said it was important but made no recommendations.

My final comment regarding the Staff Briefing relates to the statements about energy revenues once the long term contracts end. Each WTE plant has a unique energy contract. For some, the new rate will certainly be less than the current rate. For others, such as Bristol, we do not necessarily believe that energy sold in 2014 will be at a lower rate than that received right now. This is important for the ownership debate because the briefing paper seems to imply that in every case the reduction in debt expense when the bonds are paid off will be offset by a loss in energy revenue, a zero sum game. In our project, for example, we could easily see the scenario where the bonds are paid off and there is no loss in revenue, resulting in a potential $29/ton windfall profit for the private sector.

That concludes my remarks. What follows are bullet points related to the Bristol project, competition in CT and the ownership question. Thank you for your interest in this matter. We look forward to working with the Legislature on the ownership dilemma. Connecticut can and should work to see that disposal facilities paid for by state taxpayers remain in use for the public's benefit and to manage predominantly Connecticut waste.

Background Facts

- The Bristol region formed an "operating committee" in 1985 to help manage the region's waste; an "operating committee" form of management was adopted in order to retain more local control over the project.
- The BRRFOC communities are paying the debt service on the Bristol waste to energy plant.
- Unless the BRRFOC and/or its communities exercise its contractual right to purchase the facility at Fair Market Value, the owner, Covanta Bristol, will own the plant debt free in 2014. BRRFOC is presently reviewing its end of term options vis a vis purchase of the facility.
- Current debt service payments are $29/ton and, absent necessary substantial plant improvements, will go to zero in 2014.
- Combustion of solid waste was encouraged by the state in order to minimize pollution from landfills and to generate needed electricity.
- As a result of state policy, we have a waste to energy system that manages and safely disposes of 90-95 percent of solid waste that is not recycled.
- When the projects were financed in the mid-1980s, complex federal tax laws and other unique

circumstances were in play.[1]

- Five of the six trash to energy plants in the state are currently owned and/or controlled by the public sector under long term contracts. Four of these publicly owned plants, including Bristol, could become 100 percent controlled by the private sector upon contract expiration.[2/3]

Public Policy

- Connecticut has established public policy that the management of solid waste is a fundamental governmental service and responsibility. The United States Supreme Court in United Haulers v. Oneida Herkimer re-affirmed local government's role in solid waste management as part of its police powers. The decision unequivocally permits use of local ordinances to direct solid waste to *publicly* owned facilities.[4]

- The Court recognizes that local government needs to provide (typically at significant cost) ancillary services to the public such as recycling and household hazardous waste collections; services which are typically bundled in tip fees at publicly owned projects.[5]

- Local governments have an obligation to provide integrated solid waste management systems in a cost-effective manner. Further, local governments have a track record of providing these services with recognition of longer-term social benefits.[6]

- Connecticut can learn from its experience with electric deregulation, i.e., turning an essential public service over to the private sector does not necessarily result in better service or lower costs.[7] Many studies have shown that unregulated electricity costs more.[8]

Competition, Public-Private Ownership

- Government is interested in cost based fees, the private sector wants market rates which will be based on long distance exports to out of state landfills. The market rates will increase with the higher costs of fuel. The trend in the solid waste industry has been to move away from a competitive marketplace.[9]

- Competition in the marketplace requires a number of conditions, including:[10]

1 Jonathan S. Bilmes, "Don't Let Connecticut's Trash Plants Go Private," *Hartford Courant*, April 19, 2006.
2 Ibid.
3 Michael A. Pace, "Act to Ensure Waste Plants Benefit Public," *New Haven Register*, January 27, 2007.
4 United Haulers Association, Inc. v. Oneida-Herkimer Solid Waste Management Authority, 127s.ct.1786 (2007).
5 United Haulers Association, Inc. v. Oneida-Herkimer Solid Waste Management Authority, op.cit.
6 John H. Skinner, "The Real Winners in Oneida-Herkimer," *MSW Management, Vol. 17, No.6, September/October 2007, p.171.*
7 Bilmes, op.cit.
8 David Cay Johnston, "Unregulated Electricity Costs More, Studies Say," *The New York Times*, November 6, 2007.
9 Gershman, Brickner & Bratton, Inc., In Association with: Ecodata, Inc., "Meeting the Challenge – Ensuring Capacity for Connecticut's Municipal Solid Waste and Recyclables in Changing Market Conditions," Westport, Connecticut, February 27, 2007.
10 Robert F. McCullough, Jr., "Connecticut Energy Policy: Critical Times—Critical Decisions," Portland, Oregon, April 1, 2008, available at http://www.mresearch.com/pdfs/339.pdf (last visited Sept. 10, 2008).

- Large numbers of buyers and sellers
- All buyers and sellers have perfect information about the prices in the marketplace
- Complete freedom of entry into the market

- True competition does not exist in the solid waste disposal market in Connecticut. The solid waste disposal industry is highly concentrated.[11]

- According to Attorney General Richard Blumenthal, private operators have a local monopoly on solid waste disposal and can collect windfall profits from plants built at taxpayer expense.[12]

- The private sector will maximize their profits by offering capacity to the highest bidders even if located out of state. [13] Connecticut is currently shipping 400,000 tons of its waste out of state, most of it to landfills.[14] The state's waste to energy plants are at capacity. To the extent additional waste is brought into the state as a result of private ownership, additional Connecticut waste will be going to distant landfills. This will cause additional truck traffic on our already over congested highways, air pollution and greenhouse gas emissions.

- Without the cost controls established by government ownership and/or control, private market forces could cause dramatic cost increases like those experienced with electricity prices under deregulation.[15] Privately owned and operated plants are just that...private. The owners may use the facilities in whatever manner they choose, including shutting them down and/or filling their capacity with waste from outside Connecticut.

- Depending on out of state options is a high risk strategy.[16]

- Public ownership benefits the citizens, private ownership benefits stockholders. Due to Connecticut's Freedom of Information Act, a public project will be more transparent and accountable to the taxpayers of the state.[17]

- Nationwide, many examples exist of public ownership of waste to energy facilities with private operation. Transitioning to public ownership of the waste to energy facilities does not eliminate the private sector's role.[18]

- The legislature should do whatever it can to assist a region such as ours to transition to public ownership. Connecticut taxpayers have paid for these plants and should reap the benefits of a debt-free plant when the bonds are paid off.

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11 Ibid.
12 James Tinley, Register Staff, "20 Area Towns Targeting Trash Fees," *New Haven Register,* March 30, 2008.
13 Lois B. Hager, Retired DEP Bureau Chief, *Letter to Yvonne Bolton, DEP Bureau Chief,* Bloomfield, CT, June 4, 2008.
14 Gina McCarthy, DEP Commissioner, "Proposed Amendment to the State Solid Waste Management Plan July 2006," State of Connecticut Department of Environmental Protection, Hartford, CT, available at www.ct.gov/dep.
15 Bilmes, op.cit.
16 Gershman, op.cit.
17 Gershman, op.cit.
18 Skinner, op.cit.